



Sales Tax Information for Restaurants



Utah State Tax Commission

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If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811, or TDD (801) 297-2020. Please allow three working days for a response.

Introduction

This publication provides tax information relating to restaurants. General sales and use tax information is available in Publication 25.

Tax Commission publications are reference tools. They are not all-inclusive and should not be used as legal references.

Tax laws may change due to legislative action. Changes to law will supersede any information in this publication.

Definition of a Restaurant

A restaurant is any retail establishment whose primary business is the sale of prepared food for immediate consumption. Retail establishment means a single outlet, whether or not at a fixed location, operated by a seller. Primary business means the source of more than 50 percent of the revenues of the retail establishment. Examples of restaurants include:

- full service dining
- fast-food
- coffee shops
- cafeterias
- luncheonettes
- soda fountains
- catering facilities
- private clubs and taverns
- sidewalk vendors
- food concessions in malls

The definition of a restaurant does not include:

- a retail establishment whose primary business is the sale of fuel or food items for off-premise, but not immediate, consumption; or
- a theater that sells food items. A theater is an indoor or outdoor location for the presentation of movies, plays, or musicals, but does not include a dinner theater. The sale of food at dinner theaters or concerts is subject to the restaurant tax. Food courts, even if located in close proximity to a theater, are considered restaurants and are subject to the restaurant tax.

Multiple Lines of Business at One Location

In the case of a retail establishment that has more than one line of business, the line of business that generates the highest revenues when compared to the other lines of business is considered the primary business.

Example: A candy store sells prepackaged boxes of candy accounting for 80 percent of overall revenue and also sells small candy items over the counter for immediate consumption accounting for 20 percent of overall revenue. In this instance, the candy store is not considered a restaurant, nor does the restaurant tax apply to the items sold for immediate consumption.

Multiple Retail Establishments at One Location

In other instances, a single seller engaged in multiple lines of business at one location may be deemed to be operating multiple retail establishments if the lines of business are not commonly regarded as a single retail establishment or if there are other factors indicating the lines of business should be treated separately.

Example: A stadium owner charges admission to an event and also sells prepared food at a concession stand inside the stadium. In this instance, the operation of the concession stand by a stadium owner or promoter with a financial interest in ticket sales or admission charges to an event is considered a separate line of business constituting a retail establishment. Therefore, the concession stand is a restaurant and subject to the restaurant tax. Any ticket sales for events are considered a separate retail establishment and not subject to the restaurant tax.

A retailer who sells foods or beverages for immediate consumption, but is uncertain if the business is a restaurant for purposes of this tax, must request an exemption from the Tax Commission before being excused from collecting the tax. The request must be in written form and indicate the circumstances for which the seller considers the business exempt. All requests should be addressed to:

Taxpayer Services Division
Technical Research Unit
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Application of Restaurant Tax

In addition to sales and use tax, Utah Code §§59-12-602 through 59-12-603 authorizes county governments to impose a tourism tax of up to 1 percent on all sales of prepared foods by restaurants. Emery, Millard, Piute, and San Juan counties have not imposed the restaurant tax. Utah County has imposed the restaurant tax at .9 percent. All other counties have elected to impose the full 1 percent.

The restaurant tax is reported and paid on a separate return, due at the same time the business owner's sales and use tax return is due:

- Quarterly filers use form TC-61F, *Tourism, Recreation, Cultural, Convention Facilities & Car Rental Tax Return*.
- Monthly filers use form TC-61FV, *Tourism, Recreation, Cultural, Convention Facilities & Car Rental Monthly Tax Return*.

Restaurants or caterers located in counties that impose the restaurant tax are required to charge an additional one percent tax on all sales, even if the prepared foods are delivered to a location that does not impose the restaurant tax.

Restaurants or caterers located in counties that do not impose the tax will not charge the restaurant tax on any sales.

Corkage, set ups, and required gratuities are subject to both sales and restaurant tax, as are charges for room service meals and beverages.

Restaurant sales of items other than prepared foods and beverages, such as souvenir T-shirts, are not subject to restaurant tax. Other examples include equipment rental, use of flowers and decorations, and the sale of ice carvings for banquets.

Restaurant Operations

1. A restaurant must pay sales or use tax on:
 - items purchased primarily for advertising, such as matchbooks and complimentary menus;
 - the purchase price of utensils and supplies. Paper or plastic products discarded after use by the customer are exempt; and
 - the cost of ingredients for meals furnished free to employees.
2. Sales made through vending machines are taxable. Tax should be divided out of the total proceeds. For example, assuming a tax rate of 6.125 percent and proceeds of \$550.00, the taxable sales are \$518.26.

$$\text{\$550 divided by 1.06125} = \text{\$518.26}$$

The law provides an optional method of taxing food or drink products where the vended price is \$1 or less. The option allows the operator to pay tax on 150 percent of the purchase price, and treat the sale itself as exempt. See Tax Commission Rule R865-19S-74 for more information.

3. If a restaurant sells prepackaged foods as incidental items with the sale of prepared foods, restaurant tax applies to the prepackaged food as well.
4. If meal tickets or coupons are sold by persons engaged in selling those particular taxable goods or services, sales or use tax must be collected on the selling price of the meal tickets or coupons.

Tips and Gratuities

Tips are not subject to sales tax as long as they are not mandatory and are not shown on the invoice. Service charges, gratuities or other charges shown on the invoice are subject to tax.

If the charges are subject to sales tax, they are also subject to restaurant tax.

Cover Charges

Cover charges to enter a restaurant, tavern, club, or similar establishment are subject to sales tax as an admission, but are not subject to restaurant tax.

Admission Charges

Admissions and user fees charged for any amusement, entertainment, recreation, exhibition, cultural, or athletic activity are subject to Utah sales tax.

Taxable activities include, but are not limited to, admissions and user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing and wrestling matches, closed-circuit television broadcasts, billiard or pool parlors, bowling lanes, golf and miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, and horseback rides.

Exceptions

The law states that admission and user fees include season passes, but does not include annual membership dues paid to a private organization.

Tax Commission Rule 865-19S-33, clarifies that fees beyond the annual membership dues paid to a private organization such as a country club for use of the golf course, pool, or any other related activity, are considered season passes and are therefore taxable. The rule defines annual membership dues paid to a private organization to include only membership dues paid to an organization whose members, directly or indirectly, establish the level of the membership dues.

The rule provides that amounts paid for the following activities are not admission or user fees:

- lessons, public or private;
- sign-ups for participation in amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, if the nonprofit corporation or organization's primary purpose, as stated in its articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;
- sign-ups for participation in school activities. Sign-up for participation in school activities excludes attendance as a spectator at school activities.

Fees for the above activities must be separately stated on an invoice in order to remain untaxed. If, for example, fees for a golf lesson are included with fees for use of the golf course, the entire amount is subject to sales tax.

Alcoholic Beverages

Liquor, Mixed Drinks, Set-ups and Wine

Restaurants, taverns, and clubs selling liquor, mixed drinks, and wine are not required to charge sales tax on the liquor portion. The Utah Department of Alcoholic Beverage Control (DABC) collects sales tax on all items sold in state liquor stores. However, the seller must remit sales tax on the amount charged for set-ups and wine service. The entire cost of a mixed drink (including the liquor) is subject to the one percent restaurant tax.

The DABC does not collect the 1 percent (or adopted rate) restaurant tax; therefore, restaurants, taverns and clubs must collect the restaurant tax on alcohol and set-up sales in those counties that have adopted the tax. To compute the restaurant tax due on alcohol, the seller multiplies the cost of the alcohol, prior to the assessment of liquor and sales taxes, by the 1 percent (or adopted rate) restaurant tax rate. Following are examples of the calculation (based on a 6.25 percent sales tax rate).

Example 1 Including Restaurant Tax

	Sales Price Per Drink (including tax)	Sales Tax	Restaurant Tax	Total
Liquor	\$2.00	—	\$.02	\$.02
Set-up	\$3.00	\$.18	\$.03	\$.21
Total				\$.23

Example 1 demonstrates the calculation for counties that have chosen to impose the 1 percent restaurant tax. The restaurant tax on the liquor (\$.02) is calculated by:

1. dividing the \$2 cost per drink by 1.1925 to obtain the cost of the alcohol prior to the assessment of alcohol (13 percent) and sales (6.25 percent) taxes. In this example, that results in the amount of \$1.68; and
2. by multiplying the \$1.68 by .01 (the restaurant tax) to calculate the amount of restaurant tax due on the alcohol.

In **Example 1**, taxes on the set-up (\$.18) are calculated by:

1. dividing the \$3 sales price by 1.0725 to obtain the cost of the set-up prior to the assessment of sales (6.25 percent) and restaurant (1 percent) taxes. In this example that results in the amount of \$2.80; and
2. by multiplying the \$2.80 by .0625, the sales tax rate, to calculate the amount of sales tax due on the set-up, and by .01, the restaurant tax rate, to calculate the amount of restaurant tax due on the set-up.

Example 2 Excluding Restaurant Tax

	Sales Price Per Drink (including tax)	Sales Tax	Total
Liquor	\$2.00	—	\$.00
Set-up	\$3.00	\$.18	\$.18
Total			\$.18

Example 2 is the calculation for counties that have chosen not to impose the restaurant tax.

The seller may place a sign on the wall or print a notice on the bar bill stating that sales tax (and restaurant tax, in counties where it has been imposed) are included in the total price. Bar bills should be separate from bills for food or other items that must have sales tax added to the sales price.

Additional Reference Material

- Utah Code §§59-12-601 through 59-12-603
- Administrative Rule R865-19S-94

Sales tax publications provide general guidance only. They do not contain all sales or use tax laws or rules. If you need additional information, call (801) 297-7705 or 1-800-662-4335, ext. 7705 (outside the Salt Lake area), or email taxmaster.utah.gov.